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Remarks:

*Regarding the rejection of claims 1-27 under 35 USC 103(a) in view of US 5122159 to Olsen et al., (hereinafter simply "Olsen"):*

The applicant respectfully traverses a rejection of the outstanding claims in view of the Olsen reference, and requests reconsideration of the propriety of the rejection in view of the following remarks.

Prior to discussing the Prior to discussing the relative merits of the Examiner's rejection, the undersigned reminds the Examiner that the determination of obviousness under §103(a) requires consideration of the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 [148 USPQ 459] (1966): (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. *McNeil-PPC, Inc. v. L. Perrigo Co.*, 337 F.3d 1362, 1368, 67 USPQ2d 1649, 1653 (Fed. Cir. 2003). See also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2D 1385 (U.S. 2007).

A methodology for the analysis of obviousness was set out in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000) A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

The Examiner is reminded that in *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), the Federal Circuit stated:

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"It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." (quoting *In re Fine*, 837 F.2d at 1075, 5 USPQ2d at 1600)

See also *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 220 USPQ 303 (CAFC, 1983); *In re Mercier* 185 USPQ 774, 778 (CCPA, 1975); *In re Geiger* 2 USPQ2d 1276 (CAFC, 1987); *In re Rouffet*, 47 USPQ2D 1453 (Fed. Cir. 1998).

Turning first to the Examiner's rejection of the claims under 35 USC 103(a) in view of US 5122159 to Olsen et al., the application is essentially directed to a "stone-less" stonewashing composition which may include a single enzyme, namely a cellulose enzyme, which compositions are used to form a treatment composition for providing surface and/or color degradation of indigo dyed garments or "blue jeans". The compositions contain cellulose(s) at a concentration of 1000-6000 CMC units per gram of composition, may include one or more conventional surfactants, solvents, inorganic materials such as alkali metal or alkaline earth metal inorganic salts which can be solidified, or alternately water-soluble organic polymers in order to form a "...cast solid, large granules or pellets..." forms of the compositions, electrolytes in an amount of 1-50%wt., "masking agents", cellulase activators, antioxidants, organic solvents as a solubilized yours, builders, and also mention that column 10, line 28 following are one or more thickeners which can be used to form a composition.

Although the Examiner contends that the following passage at column 7, lines 54-62 of Olson is ostensibly relevant:

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#### SOLID FORMING AGENTS

The compositions of the invention can be formulated in a solid form such as a cast solid, large granules or 55 pellets. Such solid forms are typically made by combining the cellulase enzyme with a solidification agent and forming the combined material in a solid form. Both organic and inorganic solidification agents can be used. The solidification agents must be water soluble or dis- 60 persible, compatible with the cellulase enzyme, and easily used in manufacturing equipment.

The Applicant strongly disagrees, as there appears to be absolutely no mention within the four corners of this document any composition which matches the characteristics of the applicant's presently claimed compositions, namely, in including: enzyme-containing particles which include enzymes and an encapsulating agent which is soluble in water but insoluble in the aqueous boron-free detergent composition, wherein the said encapsulating agent is insoluble within the said aqueous boron-free detergent composition, but are only released after dilution/dispersion of the said detergent composition in water (such as to form a laundry bath or laundry liquor) which operates to solubilize the water-soluble encapsulating agent and thereby releases the enzymes to the wash liquor. Such is supported by the following an earlier passage in Olson bridging columns 3 and 4 which recites:

The stone free "stone washed" methods of the invention involve contacting clothing items or denim fabric with an aqueous solution containing a cellulase enzyme composition and agitating the treated fabric for a sufficient period of time to produce localized variations in color density in the fabric. The fabric items can be wet by the solution and agitated apart from the bulk aqueous 63

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liquors or can be agitated in the liquor. Typically the aqueous solution contains the cellulase enzyme and a cellulase compatible surfactant that increases the wetting properties of the aqueous solution to enhance the cellulase effect.

The aqueous treatment solutions are typically prepared from a liquid or solid concentrate composition which can be diluted with water at appropriate dilution ratios to formulate the aqueous treatment. The "stone wash concentrate" compositions typically contain the cellulase enzyme and a diluent such as a compatible surfactant, a non-aqueous solvent or a solid-forming agent that can produce in a treatment liquor a suspension of the cellulose enzyme without significant enzyme activity loss.

Parsing the last sentence of the above carefully, it appears that the function of the "solid-forming agent" is one which forms the suspension of the enzyme within the wash liquor, but *not* in the concentrate form of Olson's product. Thus, Olson's product does not appear to anticipate nor render the applicant's currently claimed composition as being obvious in view of Olson.

The Examiner's reliance on Olson's remarks concerning the use of thickeners by Olson also does not render the Applicant's invention as non-inventive. Olson's remarks regarding thickeners may be found in the following paragraph:

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The cellulase treatment compositions of the invention can be manufactured in the form of a thickened liquid or 30 a gel. Common organic and inorganic compositions can be used to produce the thickened or gelled product form. Such a product form is useful in enzyme preparations wherein the enzyme tends to be salted out by the concentration of inorganic or organic buffer components. The thickened or gelled compositions tend to 35 maintain the uniformity of the enzyme containing compositions and can ensure that the enzyme treatments are uniform. A non-uniform product can result in either large excesses of enzyme or absence of enzyme. Such 40 thickeners include organic and naturally occurring polymers such as ethylene vinyl acetate copolymers, polyethylene waxes, acrylic polymers, cellulosic polymers including carboxymethyl cellulose, carboxyethyl cellulose, cellulose acetates, ethoxylated cellulose, alkanolamides, waxy alcohols, and others; magnesium aluminum 45 silicates, bentonite clays, fumed silica, xanthan guar gum, algin derivatives, polyvinyl pyrrolidone, di and tristearate salts, and other conventional thickeners.

From the foregoing, while it is clear that thickened gelled compositions are alleged to be useful in order to "maintain the uniformity of the enzyme containing compositions and can ensure that the enzyme treatments are uniform", there is however no mention that the enzymes themselves are formed with or provided with their own "encapsulating agent", so that they form a separate "particulate phase" within the "bulk phase", e.g. a gel. However, a proper reading of the above clearly shows that at best, the liquid forms of Olson's compositions can be thickened. However, Olson still fails to teach or suggest any type of modification of the enzyme particles themselves in the manner which only with the present applicants provide and presently claim. Olson only mentions at column 6, line 10-13 that "Cellulase, like many enzyme preparations, is typically produced in an impure state cellulase often is manufactured on a support." Olson however makes no mention or teaching of what this "support" can be, or any of the aqueous soluble characteristics of these commercially available cellulase preparations.

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In view of the foregoing remarks, in light of the presently amended claims, reconsideration of the propriety of the outstanding grounds of rejection and withdrawal of said rejections is solicited.

*Regarding the rejection of claims 1-27 under 35 USC 103(a) in view of US 6395701 to Conner et al. (hereinafter simply "Conner"):*

The applicant respectfully traverses a rejection of the outstanding claims in view of the Conner reference, and requests reconsideration of the propriety of the rejection in view of the following remarks.

A review of the Conner reference, and the remarks of the Examiner appears to suggest that Conner's encyclopedic-like content and has elected to selectively pick-and-choose amongst the isolated disclosures in order to address the shortcomings of Olson. Apart from being an exercise in proscribed "hindsight reconstruction" the Applicant asserts that such reliance is unjustified and insufficient, as Connor does not appear to demonstrate or specifically suggest the specifically claimed compositions as presented in the instant claims. Even from reading Connor's abstract, it is quite clear that the primary focus of the Connor reference has little to do with the types of detergent compositions now claimed, but Conner's compositions are substantially are focused upon hard surface, soft surface, and personal-care compositions which may use the (allegedly novel) fatty acids and derivatives which are described in the published patent.

The Examiner's reliance on the 110 columns of Connors text in order to rebut Applicant's independent claim appears to be unfounded. With regard to enzymes, the relevant passages of Connors regarding enzymes spans from column 57, and concludes near the bottom of column 60 which, nonetheless, does not specifically disclose the type of enzyme preparation which the applicant's now claim.

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Further, with regard to Connors and the Examiner's statement at page 3 of the outstanding *Office Action*, the Examiner focus upon Connors's discussion regarding the allegedly utility of optimization of inorganics such as phosphates, polyphosphates, carbonates, bicarbonates, and sulfates in order to allegedly inhibit the degradation of the biological activists in liquid enzyme containing compositions appears to be misplaced, as the relied upon a passage at Connor's column 93, lines 25-35 makes it quite clear that the first sentence of that passage states " Since the biodegradable ester fabric softener activists are somewhat labile to hydrolysis, it is preferable to include optional pH modifiers in the solid particulate fabric softener compositions to which water is to be added..." Perchance the Examiner seems to have equated "biodegradable ester fabric softener" with an "enzyme", although there is no basis in science or in fact for setting such an equality. Thus, it appears that the Examiner's reliance upon the Connors text is inappropriate.

In view of the foregoing remarks, in light of the presently amended claims, reconsideration of the propriety of the outstanding grounds of rejection and withdrawal of said rejections is solicited.

The early issuance of a *Notice of Allowability* of the claims presented herein is solicited. Should the Examiner in charge of this application believe that communication with the undersigned will favorably advance the prosecution of this application, they are invited to contact the undersigned at their convenience.

**PETITION FOR A THREE-MONTH EXTENSION OF TIME**

The applicants respectfully Petition for a three-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this Petition.

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**CONDITIONAL AUTHORIZATION FOR FEES**

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, including any necessary extension of time petition and fee, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;

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Enclosure – *Request for Continued Examination*

16 Sept. 2008

Date:

**CERTIFICATION OF TELEFAX TRANSMISSION:**

I hereby certify that this paper is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571 273-8300 on the date shown below:

Allyson Ross

Allyson Ross

16 September 2008

Date:

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